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8 UNITED STATES DISTRICT COURT  
9 EASTERN DISTRICT OF CALIFORNIA  
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11 WILLIAM JAMES WALLACE, II,  
12 Plaintiff,  
13 v.  
14 J. WHITE, et al.,  
15 Defendants.  
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Case No. 1:20-cv-00844-NONE-EPG (PC)

ORDER DENYING REQUEST TO APPOINT  
EXPERT WITNESS

(ECF No. 32)

17 Plaintiff William James Wallace, II (“Plaintiff”) is a state prisoner proceeding *pro se* and  
18 *in forma pauperis* in this civil rights action pursuant to 42 U.S.C. § 1983.

19 On June 7, 2021, the Court entered an order directing the parties to file a statement  
20 regarding the schedule and discovery matters within thirty days. (ECF No. 29.) Plaintiff filed his  
21 statement on June 25, 2021. (ECF No. 32.) In his statement, Plaintiff requests that the Court  
22 appoint an expert witness “to attest to the unsanitary conditions at Wasco State Prison, in regard  
23 to the claims of inadequate ventilation, inoperable plumbing and another to qualify the Plaintiff as  
24 entitled to the Reasonable Accommodations to which he requested and was subsequently denied.”  
25 (ECF No. 32.)

26 The Court has the discretion to appoint an expert pursuant to Rule 706(a) of the Federal  
27 Rules of Evidence. *See Walker v. American Home Shield Long Term Disability Plan*, 180 F.3d  
28 1065, 1071 (9th Cir. 1999). In relevant part, Rule 706(a) states that, “[o]n a party’s motion or on

1 its own, the court may order the parties to show cause why expert witnesses should not be  
2 appointed . . .” Fed. R. Evid. 706(a). While the Court has the discretion to appoint an expert and  
3 to apportion costs, including the apportionment of costs to one side, Fed. R. Evid. 706(c)(2); *Ford*  
4 *ex rel. Ford v. Long Beach Unified School Dist.*, 291 F.3d 1086, 1090 (9th Cir. 2002), Rule 706 is  
5 not a means to avoid the *in forma pauperis* statute’s “prohibition against using public funds to  
6 pay for the expenses of witnesses,” *Manriquez v. Huchins*, 2012 WL 5880431, at \*12 (E.D. Cal.  
7 2012), nor does Rule 706 “contemplate court appointment and compensation of an expert witness  
8 as an advocate for one of the parties,” *Faletogo v. Moya*, 2013 WL 524037, at \*2 (S.D. Cal.  
9 2013).

10 “Where a party has filed a motion for appointment of a neutral expert under Rule 706, the  
11 court must provide a reasoned explanation of its ruling on the motion. Several factors guide the  
12 court’s decision. First, and most importantly, the court must consider whether the opinion of a  
13 neutral expert will promote accurate fact finding. The court may also consider the ability of the  
14 indigent party to obtain an expert and the significance of the rights at stake in the case. Expert  
15 witnesses should not be appointed where they are not necessary or significantly useful for the trier  
16 of fact to comprehend a material issue in a case.” *Johnson v. Cate*, 2015 WL 5321784, at \*2 (E.D.  
17 Cal. 2015) (citations omitted).

18 Plaintiff’s request for appointment of an expert witness will be denied. First, Plaintiff has  
19 failed to show that an expert is “necessary or significantly useful for the trier of fact to  
20 comprehend a material issue in [this] case.” *Johnson*, 2015 WL 5321784, at \*2. Plaintiff has not  
21 explained how a neutral expert would assist the Court or the jury in comprehending a material  
22 issue in this case. Plaintiff can provide testimony regarding his observations of and experience  
23 with the unsanitary conditions at Wasco State Prison. There is no indication that the trier of fact  
24 will not be able to understand or interpret the evidence on these issues without the assistance of  
25 an independent expert.

26 Although Plaintiff also requests an expert “to qualify the Plaintiff as entitled to the  
27 Reasonable Accommodations to which he requested and was subsequently denied[,]” this case  
28 proceeds only on Plaintiff’s claims against Defendants Lopez, Wade, White, and Doe for  
unconstitutional conditions of confinement in violation of Plaintiff’s Eighth Amendment rights.

1 (See ECF Nos. 18, 19, 32.) All other claims, including Plaintiff's claims pursuant to the  
2 Americans with Disabilities Act, have been dismissed. (See ECF Nos. 18, 19.) Therefore, whether  
3 Plaintiff was entitled to a reasonable accommodation is not an issue in this case.

4 Second, Plaintiff appears to be requesting that the Court appoint an expert for him—not a  
5 neutral expert. (See ECF No. 32.) Appointing an expert witness to assist Plaintiff in the  
6 preparation of his case would be an improper use of Rule 706(a). *Faletogo*, 2013 WL 524037, at  
7 \*2 (S.D. Cal. 2013) (Rule 706(a) “does not contemplate court appointment and compensation of  
8 an expert witness as an advocate for one of the parties.”).

9 Accordingly, IT IS HEREBY ORDERED that Plaintiff's request for appointment of an  
10 expert witness (ECF No. 32) is denied.

11 IT IS SO ORDERED.

12 Dated: **June 28, 2021**

13 /s/ Eric P. Gray  
14 UNITED STATES MAGISTRATE JUDGE  
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